

Message

From: Byck, Sabina [Byck.Sabina@epa.gov]
Sent: 1/6/2023 8:26:19 PM
To: Garcia, Lisa [Garcia.Lisa@epa.gov]; Glenn, Olivia [Glenn.Olivia@epa.gov]; Mugdan, Walter [Mugdan.Walter@epa.gov]; Mears, Mary [Mears.Mary@epa.gov]; Rodriguez, Elias [Rodriguez.Elias@epa.gov]; Evangelista, Pat [Evangelista.Pat@epa.gov]; Prince, John [Prince.John@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]
Subject: FYI: Voices of Gowanus Letter to: EPA Investigation Follow Up // Gowanus CAG
Attachments: VoG Letter to IG USEPA_Dec2022.pdf

Hi Lisa and team-

Flagging for all that Lisa, Administrator Regan, and other EPA leaders were copied on the attached letter from Voices of Gowanus to DOJ and OIG regarding the Gowanus CAG.

Thanks,
Sabina

From: Linda LaViolette <linda@voiceofgowanus.org>
Date: December 30, 2022 at 10:34:58 AM EST
To: "Sean W. O'Donnell" <O'Donnell.Sean@epa.gov>, Breon Peace <Breon.Peace@usdoj.gov>
Cc: Joe Biden <President@whitehouse.gov>, Kirsten Gillibrand <kg@kirstengillibrand.com>, Nydia Velazquez <margarita.velazquez@mail.house.gov>, Jerrold Nadler <CongressmanNadler@mail.house.gov>, Kathleen Hochul <correspondence.office@exec.ny.gov>, Jabari Brisport <brisport@nyassembly.gov>, Jo Anne Simon <simonj@nyassembly.gov>, Marcela Mitaynes <mitaynesm@nyassembly.gov>, "Michael S. Regan" <Regan.Michael@epa.gov>, Matthew Silverman <matthew.silverman@usdoj.gov>, Brenda Mallory <BMallory@ceq.eop.gov>, Matthew Tejada <tejada.matthew@epa.gov>, Charles Lee <lee.charles@epa.gov>, Lawrence Starfield <Starfield.Lawrence@epa.gov>, "Lisa F. Garcia" <garcia.lisa@epa.gov>, OIG Hotline <OIG_Hotline@epa.gov>, White House Environmental Justice Advisory Council <ejhotline@epa.gov>, Basi Seggos <basil.seggos@dec.ny.gov>, Barry Breen <Breen.Barry@epa.gov>, Radhika Fox <fox.radhika@epa.gov>, Benita Best-Wong <Best-Wong.Benita@epa.gov>, Brian Carr <Carr.Brian@epa.gov>, Michael Lynch <mike_lynch@schumer.senate.gov>, Erin Sager Vaughn <erin_sager@schumer.senate.gov>, Steve Barton <Steve_Barton@schumer.senate.gov>, Tim Ryder <tim_ryder@schumer.senate.gov>, Jess Fassler <Jess_Fassler@gillibrand.senate.gov>, "Wiley, Daniel" <Daniel.Wiley@mail.house.gov>, "Amy B. Rutkin" <amy.rutkin@mail.house.gov>, Sara Agars <Sara.Agars@exec.ny.gov>, Susannah Pasquantonio <pasquantonios@nyassembly.gov>, Patrick Donovan <patrick_donovan@schumer.senate.gov>, Margot Brown <marbrown@edf.org>, "Izeman, Mark" <mizeman@nrdc.org>, Suzanne Novak <snovak@earthjustice.org>, Lucy Lang <inspector.general@ig.ny.gov>, Nora Brickner <nbrickner@council.nyc.gov>, Mia Perez <MPerez@council.nyc.gov>, Maureen Koetz <Koetz@koetzduncan.com>, Jack Riccobono <jack@voiceofgowanus.org>, info@voiceofgowanus.org, "LeGendre, Rumer" <Rumer.LeGendre@mail.house.gov>, Caroline Crowell <caroline@dangoldmanfornny.com>, "Kaplan, Jennifer" <Kaplan.Jennifer@epa.gov>, "Hoffman, Lori" <Hoffman.Lori@epa.gov>
Subject: EPA Investigation Follow Up // Gowanus CAG

By Registered Mail and Email

Mr. Sean W. O'Donnell

Inspector General

US Environmental Protection Agency

Office of Inspector General

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US Department of Justice

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December 30, 2022

Dear Sirs,

By letters dated May 16, 2022, and June 14, 2022, Voice of Gowanus (VoG) requested that the USEPA Inspector General open a full investigation of multiple compliance and enforcement failures affecting the Gowanus Canal under Federal and State laws and regulations, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or "Superfund"), and the Clean Water Act (CWA).

As prior correspondence details, devastating effects from decades of compliance failure at Gowanus are being compounded by a planned 80-block rezoning that will likely add more than 30,000 additional residents to a sewer shed already burdened with compliance failures that include:

- A Superfund Listing improperly disaggregated from 33 Canal upland contamination sites in the NPL designation;
- Inadequate toxin removal and cleanup levels;
- An Impaired Water designation under CWA §303;
- Repetitious Combined Sewer Overflow (CSO) Enforcement Orders leading to a Long-Term Control Plan that has not prevented continued Impaired Status designation;
- Related failed Water Quality Standard setting and enforcement;
- Delayed construction of two CSO retention tanks which, as currently designed, will be grossly inadequate for the current rezoning of the Gowanus neighborhood according to USEPA Region 2; the fact that these tanks are undersized will have a direct and detrimental impact on USEPA's remedy of the Gowanus Canal;
- A Sewage Backup Administrative Order that has yet to prevent raw sewage in basements in Gowanus and surrounding neighborhoods;
- Premature construction releasing contaminants and threatening the integrity of Canal, groundwater, and soil cleanups throughout the Gowanus area.

Our prior correspondence described efforts at suppression of and retaliation against USEPA personnel willing to disclose important information to the Gowanus community regarding inadequate remedies of known sources of contamination to the Gowanus Canal that were improperly left out of the Gowanus Superfund designation. Unfortunately, this pressure on USEPA to suppress information and allow immediate reuse of insufficiently remediated parcels left under NY State control is not just dealing with regulatory issues, correspondence, or personnel actions —it has now expanded to the USEPA Community Advisory Group (CAG) for the Gowanus Canal.

Voice of Gowanus is writing to you again regarding recently obtained information that identifies additional areas for investigation based on events transpiring since the prior request. VoG asks that this request for further investigation be considered in conjunction with the information and requests previously made.

Additional Factors and Information

At the CAG's December 1, 2020 meeting, USEPA Project Manager Christos Tsiamis spoke openly to the CAG about his concerns that dangerous toxins left behind on the uplands would recontaminate the work of the Gowanus Superfund Cleanup and expose the community to cancer-causing volatiles. Subsequently, the CAG has been discussing and passing several resolutions pushing for USEPA to take over the known operable units, which are known upland sources of

contamination to the current USEPA Superfund work. We suspect that the CAG's outspokenness has been problematic for the USEPA Region 2 Administration.

In recent weeks, USEPA seems intent on obstructing the work of the CAG. At the November, 2022 CAG meeting, the CAG's designated neutral facilitator, Doug Sarno, and the USEPA's Community Liaison, Natalie Loney, instructed CAG members that the CAG is no longer in compliance, something that had never been mentioned before. In a December 4, 2022 email (attached) Mr. Sarno strongly suggested to the CAG that regular committee work "take a break during December and January."

Unbeknownst to the majority of the members of the CAG, of which some are also members of Voice of Gowanus, the Region 2 Administrator, Lisa Garcia, received correspondence March 28, 2022 (attached) signed by four CAG participating groups (Fifth Avenue Committee, Gowanus Canal Conservatory, Riverkeeper, and Park Slope Neighbors) objecting to CAG activities and including multiple demands.¹¹ These demands were predicated on the belief that the CAG should only be "focusing on what's going on between the banks of the Gowanus Canal."

The signatory groups demanded training and other actions, and further suggested USEPA withdraw its support from the CAG and somehow "reconstitute it" or develop other means of communication if the demanded changes were not accomplished to the signatories' satisfaction.

In November, Ms. Loney and Mr. Sarno insisted on the formation of a special "working group" subcommittee to restructure the CAG, including suggestions that go against the CAG's current charter that has been in place for twelve years. It is noteworthy that three of the four signees of the letter sent to Ms. Garcia are on that special newly formed subcommittee. Note that the November full CAG meeting, and the subsequent subcommittee meetings, were not open to the public as required by the current CAG Charter.

The EPA has become complicit in trying to dismantle the CAG by not informing the rest of the members of the true motivation of "restructuring." The March letter to Ms. Garcia from the four CAG signees should have been immediately shared upon receipt with the entire CAG, and been discussed with its membership for complete transparency.

Two of the signatories of the above-mentioned letter have clear conflicts of interest. Fifth Avenue Committee is an active participant in the development of upland properties on contaminated banks of the Gowanus Canal and receives funding support from the City of New York, one of the major Responsible Parties at the site. Fifth Avenue Committee has also indicated likely use of Federal funds for development projects on the former Citizens MGP site.

Gowanus Canal Conservatory (GCC) receives support from Responsible Party National Grid under its “Corporation and Foundation Partners” program (a primary PRP in both water and soil cleanup at Gowanus). GCC is also a potential participant in Natural Resource Damage programming for Canal restoration needed to supplement cleanup actions and will be a direct beneficiary.

Additional Areas for Investigation

In light of the above, VoG hereby requests investigation into the following issues in addition to those already requested in previous correspondence:

- Failure of USEPA personnel to disclose receipt of the March 28, 2022 letter from four members of the CAG, and USEPA Region 2 Administrator Garcia’s response.
- Direct influence by several conflicted CAG members and related PRPs on USEPA decision-making regarding regulation of upland parcel cleanups, including USEPA’s direct oversight authorities on key parcels of the former Fulton MGP site, while leaving the equally problematic former Citizens MGP site under the State of New York’s purview (where the Fifth Avenue Committee is directly involved with PRP NYC in developing 950 units of affordable housing and potentially a public school on what has been described by USEPA personnel as the most toxic, polluted site in the entire area).
- Retaliation against CAG members by interested parties with disqualifying conflicts to prevent discovery and dissemination of information regarding the sufficiency of the Superfund Cleanup between, along, under, and proximate to the banks of the Gowanus Canal as well as surface and ground water and airshed. The Gowanus Canal Superfund Record of the Decision states that any source of recontamination that will have an impact on the USEPA’s Superfund work and its remedy is under the purview of USEPA. Therefore, the CAG’s discussions about upland sources of contamination fall under its purview.

Voice of Gowanus would appreciate your acknowledgement to this and our prior correspondence, and for your attention to the ongoing enforcement failures at multiple levels of government. We continue to seek the necessary and legal enforcement action for the Gowanus Superfund and its known upland sources of contamination.

Sincerely yours,

Linda LaViolette & Jack Riccobono

Co-Chairs, Outreach Committee

Voice of Gowanus

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jack@voiceofgowanus.org

Attached: March 28 letter to Ms. Garcia from 4 CAG Signatories

Cc:

The Honorable Joseph R. Biden Jr.

The Honorable Chuck Schumer

The Honorable Kirsten Gillibrand

The Honorable Nydia Velázquez

The Honorable Jerrold Nadler

The Honorable Kathy Hochul

The Honorable Jabari Brisport

The Honorable Jo Anne Simon

The Honorable Marcela Mitaynes

Mr. Daniel Goldman

The Honorable Kathy Hochul

Administrator Michael Regan, EPA

Matthew Silverman, Assistant U.S. Attorney, Chief of Environmental Litigation, Eastern District,
DOJ

Brenda Mallory, Chair, Council on Environmental Quality, Executive Office of the President

Matthew Tejada, Director, Office of Environmental Justice, EPA

Charles Lee, Senior Policy Advisor, Office of Environmental Justice, EPA

Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and
Compliance Assurance

Regional Administrator Lisa Garcia, EPA Region 2

OIG Hotline

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¶ It is the understanding of VoG that this letter received a response from the Regional Administrator. VoG requested copies of both letters, and was informed by the Region 2 Community Liaison for Gowanus that the request had to come through a Freedom of Information Act request. That request was then filed and remains pending.